

## Senate Bill No. 1038

### CHAPTER 515

An act to amend Sections 25620, 25620.1, 25620.2, 25620.3, 25620.5, 25620.7, 25620.8, 25648, 25648.4, and 25684 of, to add Section 25620.10 to, and to add and repeal Section 25620.9 of, the Public Resources Code, to amend Sections 381, 383.5, 394.25, and 445 of, to add Sections 353.2, 383.6, and 2826.5 to, to add and repeal Section 2826.6 of, and to repeal and amend Section 399.7 of, the Public Utilities Code, relating to energy.

[Approved by Governor September 12, 2002. Filed  
with Secretary of State September 12, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1038, Sher. Renewable energy.

(1) Under the Public Utilities Act, the Public Utilities Commission (commission) requires electrical corporations to identify a separate rate component to fund cost-effective energy efficiency and conservation activities, public interest research and development, and development of renewable resources technology. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law requires specified electrical corporations to collect specific amounts to support each of these programs. Existing law also requires the State Energy Resources Conservation and Development Commission (Energy Commission) to transfer funds collected for these programs to specified funds. Existing law requires the Energy Commission to develop, implement, and administer the Public Interest Research, Development, and Demonstration Program. Existing law requires the program to consist of a balanced portfolio that addresses California's energy and environmental needs, technology opportunities, and system reliability. Existing law, until January 1, 2000, required the Energy Commission to adopt regulations to ensure the success of electricity industry restructuring in the transition to a new market structure and to implement the program. Existing law authorizes the Energy Commission to solicit applications for awards, using a sealed competitive bid, competitive negotiation process, multiparty agreement, single source, or sole source method.

This bill would restate the goal of the program. The bill would require the Energy Commission to use a portfolio approach to achieve the goal.

This bill would require the Energy Commission to convene an advisory board on a regular basis, composed of representatives from the

commission, consumer organizations, environmental organizations, and electrical corporations, to make recommendations to guide the Energy Commission's selection of programs and projects to be funded.

This bill would require the Energy Commission, not later than 3 months after the enactment of this bill to designate a panel of independent experts with special expertise in public interest research, development, and demonstration programs to conduct an evaluation of the program and to submit a preliminary report to the Governor and the Legislature not later than 15 months after the enactment of this bill, and a final report not later than 30 months after the enactment of this bill.

Existing law authorizes the Energy Commission to solicit applications for awards and specifies criteria for funding projects under the program.

This bill would require the Energy Commission to adopt regulations governing the administration of the program, in accordance with specified procedures, until January 1, 2007.

The bill would make technical and conforming changes.

(2) Existing law requires the Energy Commission to prepare and submit to the Legislature by March 31 of each year, an annual report on awards of grants made by the commission for public interest energy research and development projects.

This bill would require the report to set forth the actual costs and results of programs or projects funded by the Energy Commission, compared to their expected costs and benefits.

(3) Existing law requires the commission to order electrical corporations to spend a portion of the separate rate component discussed above, to fund cost-effective energy efficiency and conservation activities, public interest research and development, and development of renewable resources technology.

This bill would require the funding of in-state operation and development of existing and new and emerging renewable resources technologies to be made available pursuant to a specified provision of existing law. The bill would make additional technical, nonsubstantive changes.

The bill would require the Energy Commission to award electrical corporations up to 10% of the funds transferred to the Public Interest Research, Development, and Demonstration Fund, for public interest research, development and demonstration projects for transmission and distribution functions, in lieu of the commission ordering electrical corporations to collect and spend funds for investments in public interest research, development, and demonstration projects for transmission and distribution functions.



(4) Existing law defines “in-state renewable electricity generation technology” for the purposes of these provisions. Existing law defines, for the purposes of these provisions, “report” as the Policy Report on AB 1890 Renewables Funding (March 1997, Publication Number P500-97-002) submitted to the Legislature by the Energy Commission.

This bill would modify the definition of “in-state renewable electricity generation technology” to no longer only include facilities that were placed in operation after September 26, 1996. The bill would include within the definition of “in-state renewable electricity generation technology” a facility using fuel cells using renewable fuels, ocean thermal, tidal current, and wave energy generation technologies. The bill would exclude from the definition waste tire technologies. The bill would provide that on and after January 1, 2002, “report,” for the purposes of these provisions, means the report entitled “Investing in Renewable Electricity Generation in California” (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the Energy Commission.

(5) Existing law requires 45% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$243,000,000, to be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities. Existing law requires 30% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$162,000,000, to be used for programs that are designed to foster the development of new in-state renewable electricity generation technology facilities. Existing law requires 10% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$54,000,000, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. Existing law requires 15% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$81,000,000, to be used for programs designed to provide customer credits for purchases of renewable energy produced by certified energy providers, to disseminate information regarding renewable energy technologies, to promote purchases of renewable energy, to help develop a consumer market for renewable energy, and to help develop a consumer market for renewable energy technologies.

This bill would instead require 20% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be



spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for programs that are designed to improve the competitiveness of specified eligible existing in-state renewable electricity generation technology facilities. The bill would instead require 51.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for programs that are designed to foster the development of new in-state renewable electricity generation technology facilities, including supplemental energy payments under the California Renewables Portfolio Standard Program, and would authorize the Energy Commission, in awarding funding, to provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations. The bill would instead require 17.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications and would authorize the Energy Commission, in awarding funding, to provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations. The bill would instead require 10% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used to provide customer credits to customers that entered into direct transactions on or before September 20, 2001, for purchases of electricity produced by in-state renewable electricity generation technology facilities. The bill would require 1% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company and the Pacific Gas and Electric Company, to be used to promote renewable energy and to disseminate information on renewable energy technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.



This bill would require the Energy Commission, in consultation with the commission, electrical corporations, publicly owned electric utilities, and the Independent System Operator, to prepare and submit to the Governor and the Legislature by December 1, 2003, a comprehensive renewable sources of electricity development plan that describes the renewable resources available in California, the costs of developing and connecting these resources into the transmission and distribution system, and recommendations for a plan for development to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17% of the total electricity generated for consumption in California. The bill would further require the Energy Commission to participate in commission proceedings that relate to or affect efforts to stimulate the development of electricity generated from renewable sources.

These changes would only become operative if SB 1078 or SB 1524 is enacted and becomes effective on or before January 1, 2003, and add the California Renewables Portfolio Standard Program.

(6) Existing law provides for the Renewable Resource Trust Fund in the State Treasury and establishes certain accounts in the Renewable Resource Trust Fund, including the Customer-Side Renewable Resource Purchases Account. Existing law provides that the money in the fund and the accounts are continuously appropriated to the Energy Commission. Existing law provides that unallocated funds in any account shall remain in the respective account until December 31, 2001.

This bill would instead establish the Customer-Credit Renewable Resources Account and the Renewable Resources Consumer Education Account. The bill would require that unallocated funds in any account remain in the respective account until the Energy Commission submits a specified report.

This bill would require the commission, by December 1, 2003, to prepare and submit to the Legislature, a comprehensive transmission plan for renewable electricity generation facilities, to provide for the rational, orderly, cost-effective expansion of transmission facilities that may be necessary to facilitate the development of renewable electricity generation facilities identified in the renewable electricity generation resource plan.

(7) Under existing law, the commission is vested with regulatory authority over public utilities and is required to establish requirements for the administration of power purchase contracts between electrical corporations and private energy producers.

This bill would authorize the City of Davis to receive a bill credit, as defined, to a benefiting account, as defined, for electricity supplied to the electrical grid by a photovoltaic facility located within and partially



owned by the city (PVUSA). The bill would require the commission to adopt a rate tariff for the benefiting account. The bill would also, until January 1, 2008, authorize California State University, Fresno to receive a bill credit, as defined, to a benefiting account, as defined, for electricity supplied to the electrical grid by a biomass facility located in Reedley and owned by California State University, Fresno (the Dinuba Facility), and the bill would require the commission to adopt a rate tariff for the benefiting account. Because a violation of the Public Utilities Act, a filed tariff, or an order of the commission is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime. The bill would declare that, due to the special circumstances applicable only to the PVUSA and the City of Davis, and to the Dinuba Facility and California State University, Fresno, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

(8) The Public Utilities Act authorizes the commission to establish rates and fees for public utilities subject to its jurisdiction.

This bill would authorize the commission to consider energy efficiency and emissions performance to encourage early compliance with the air quality standards established by the State Air Resources Board for ultra-clean and low-emission distributed generation, as defined, in establishing those rates and fees.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25620 of the Public Resources Code is amended to read:

25620. The Legislature hereby finds and declares all of the following:

(a) It is in the best interests of the people of this state that the quality of life of its citizens be improved by providing environmentally sound, safe, reliable, and affordable energy services and products.

(b) To improve the quality of life of this state's citizens, it is proper and appropriate for the state to undertake public interest energy research, development, and demonstration projects that are not adequately provided for by competitive and regulated energy markets.



(c) Public interest energy research, demonstration, and development projects should advance energy science or technologies of value to California citizens and should be consistent with the policies of Section 399.7 of the Public Utilities Code.

(d) The commission should use its adopted “Five-Year Investment Plan, 2002 Through 2006 for the Public Interest Energy Research (PIER) Program (Volume 1)” (P600-01-004a, March 1, 2001) to ensure compliance with the policies and provisions of Section 399.7 of the Public Utilities Code in the administration of public interest energy research, demonstration, and development programs.

SEC. 2. Section 25620.1 of the Public Resources Code is amended to read:

25620.1. (a) The commission shall develop, implement, and administer the Public Interest Research, Development, and Demonstration Program that is hereby created. The program shall include a full range of research, development, and demonstration activities that, as determined by the commission, are not adequately provided for by competitive and regulated markets. The commission shall administer the program consistent with the policies of Section 399.7 of the Public Utilities Code.

(b) The goal of the program is to provide public value for the benefit of California and its citizens through the development of technologies which will improve environmental quality, enhance system reliability, increase efficiency of energy-using technologies, lower system costs, or provide other tangible benefits.

(c) To achieve the goal established in subdivision (b), the commission shall adopt a portfolio approach for the program that does all of the following:

(1) Effectively balances the risks, benefits, and time horizons for various activities and investments that will provide tangible benefits for California electricity ratepayers.

(2) Emphasizes innovative energy supply and end use technologies, focusing on their reliability, affordability, and environmental attributes.

(3) Includes projects that have the potential to enhance transmission and distribution capabilities.

(4) Includes projects that have the potential to enhance the reliability, peaking power, and storage capabilities of renewable energy.

(5) Demonstrates a balance of benefits to all sectors that contribute to the funding under Section 399.8 of the Public Utilities Code.

(6) Addresses key technical and scientific barriers.

(7) Demonstrates a balance between short-term, mid-term, and long-term potential.



(8) Ensures that prior, current, and future research not be unnecessarily duplicated.

(9) Provides for the future market utilization of projects funded through the program.

(d) The commission shall review the portfolio adopted pursuant to subdivision (c) in accordance with the “Five-Year Investment Plan, 2002 Through 2006 for the Public Interest Energy Research (PIER) Program (Volume 1)” (P600-01-004a, March 1, 2001).

(e) The term “award,” as used in this chapter, may include, but is not limited to, contracts, grants, interagency agreements, loans, and other financial agreements designed to fund public interest research, demonstration, and development projects or programs.

SEC. 3. Section 25620.2 of the Public Resources Code is amended to read:

25620.2. (a) To ensure the efficient implementation and administration of the Public Interest Research, Development, and Demonstration Program, the commission shall do both of the following:

(1) Develop procedures for the solicitation of award applications for project or program funding, and to ensure efficient program management.

(2) Evaluate and select programs and projects, based on merit, that will be funded under the program.

(b) The commission shall adopt regulations to implement the program, in accordance with the following procedures:

(1) Prepare a preliminary text of the proposed regulation and provide a copy of the preliminary text to any person requesting a copy.

(2) Provide public notice of the proposed regulation to any person who has requested notice of the regulations prepared by the commission. The notice shall contain all of the following:

(A) A clear overview explaining the proposed regulation.

(B) Instructions on how to obtain a copy of the proposed regulations.

(C) A statement that if a public hearing is not scheduled for the purpose of reviewing a proposed regulation, any person may request, not later than 15 days prior to the close of the written comment period, a public hearing conducted in accordance with commission procedures.

(3) Accept written public comments for 30 calendar days after providing the notice required in paragraph (2).

(4) Certify that all written comments were read and considered by the commission.

(5) Place all written comments in a record that includes copies of any written factual support used in developing the proposed regulation, including written reports and copies of any transcripts or minutes in





connection with any public hearings on the adoption of the regulation. The record shall be open to public inspection and available to the courts.

(6) Provide public notice of any substantial revision of the proposed regulation at least 15 days prior to the expiration of the deadline for public comments and comment period using the procedures provided in paragraph (2).

(7) Conduct public hearings, if a hearing is requested by an interested party, that shall be conducted in accordance with commission procedures.

(8) Adopt any proposed regulation at a regularly scheduled and noticed meeting of the commission. The regulation shall become effective immediately unless otherwise provided by the commission.

(9) Publish any adopted regulation in a manner that makes copies of the regulation easily available to the public. Any adopted regulation shall also be made available on the Internet. The commission shall transmit a copy of an adopted regulation to the Office of Administrative Law for publication, or, if the commission determines that printing the regulation is impractical, an appropriate reference as to where a copy of the regulation may be obtained.

(10) Notwithstanding any other provision of law, this subdivision provides an interim exception from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for regulations required to implement Sections 25620.1 and 25620.2 that are adopted under the procedures specified in this subdivision.

(11) This subdivision shall become inoperative on January 1, 2007, unless a later enacted statute deletes or extends that date. However, after January 1, 2007, the commission is not required to repeat any procedural step in adopting a regulation that has been completed before January 1, 2007, using the procedures specified in this subdivision.

SEC. 4. Section 25620.3 of the Public Resources Code is amended to read:

25620.3. (a) The commission may, consistent with the requirements of this chapter, provide awards to any individual or entity for planning, implementation, and administration of projects or programs selected pursuant to Section 25620.5.

(b) The commission may provide an award to a project or program that includes a group of related projects, or to a party who aggregates projects that directly benefit from the award.

(c) The commission may establish multiparty agreements. In a multiparty agreement, the commission may be a signatory to a common agreement among two or more parties. These agreements include, but are not limited to, cofunding, leveraged research, collaborations, and



membership arrangements. If the commission enters into these agreements, it shall be a party to these agreements and may share in the roles, responsibilities, risks, investments, and results.

(d) The commission may issue awards that include the ability to make advance payments to prime contractors, to enable them to make advance payments to a subcontractor that is a federal agency, national laboratory, or state entity, on the condition that the subcontract is binding and enforceable and includes specific performance milestones.

(e) The commission may issue awards that include the ability to assign tasks on a work authorization basis.

(f) Prior to making any award pursuant to this chapter for a research, development, or demonstration program or project, the commission shall identify the expected costs and any qualitative or quantitative benefits of the proposed program or project.

SEC. 5. Section 25620.5 of the Public Resources Code is amended to read:

25620.5. (a) The commission may solicit applications for awards, using a sealed competitive bid, competitive negotiation process, commission-issued intradepartmental master agreement, the methods for selection of professional services firms set forth in Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, interagency agreement, single source, or sole source method. When scoring teams are convened to review and score proposals, the scoring teams may include persons not employed by the commission, as long as employees of the state constitute no less than 50 percent of the membership of the scoring team. A person participating on a scoring team may not have any conflict of interest with respect to the proposal before the scoring team.

(b) A sealed bid method may be used when goods and services to be acquired can be described with sufficient specificity so that bids can be evaluated against specifications and criteria set forth in the solicitation for bids.

(c) The commission may use a competitive negotiation process in any of the following circumstances:

- (1) Whenever the desired award is not for a fixed price.
- (2) Whenever project specifications cannot be drafted in sufficient detail so as to be applicable to a sealed competitive bid.
- (3) Whenever there is a need to compare the different price, quality, and structural factors of the bids submitted.
- (4) Whenever there is a need to afford bidders an opportunity to revise their proposals.



(5) Whenever oral or written discussions with bidders concerning the technical and price aspects of their proposals will provide better results to the state.

(6) Whenever the price of the award is not the determining factor.

(d) The commission may establish interagency agreements.

(e) The commission may provide awards on a single source basis by choosing from among two or more parties or by soliciting multiple applications from parties capable of supplying or providing similar goods or services. The cost to the state may be reasonable and the commission shall only enter into a single source agreement with a particular entity if the commission determines that it is in the state's best interests.

(f) The commission, in accordance with subdivision (g) and in consultation with the Department of General Services, may provide awards on a sole source basis when the cost to the state is reasonable and the commission makes any of the following determinations:

(1) The proposal was unsolicited and meets the evaluation criteria of this chapter.

(2) The expertise, service, or product is unique.

(3) A competitive solicitation would frustrate obtaining necessary information, goods, or services in a timely manner.

(4) The award funds the next phase of a multiphased proposal and the existing agreement is being satisfactorily performed.

(5) When it is determined by the commission to be in the best interests of the state.

(g) The commission may not use a sole source basis for an award pursuant to subdivision (f), unless both of the following conditions are met:

(1) The commission, at least 30 days prior to taking an action pursuant to subdivision (f), notifies the Joint Legislative Budget Committee, in writing, of its intent to take the proposed action.

(2) The Joint Legislative Budget Committee either approves or does not disapprove the proposed action within 30 days from the date of notification required by paragraph (1).

(h) The commission shall submit semiannual reports to the Legislative Analyst and to the appropriate fiscal and policy committees of the Legislature that review bills relating to energy and public utilities. The reports shall contain an evaluation of the progress and status of the implementation of this section. In addition, the reports shall identify each instance in which an exemption authorized by subdivision (b) of Section 25620.3 was utilized.

(i) The provisions of this section are severable. If any provision of this section or its application is held to be invalid, that invalidity shall not



affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. Section 25620.7 of the Public Resources Code is amended to read:

25620.7. (a) The commission may contract for, or through interagency agreement obtain, technical, scientific, or administrative services or expertise from one or more entities, to support the program. Funding for this purpose shall be made from money in the Public Interest Research, Development, and Demonstration Fund.

(b) The commission may select the services or expertise described in subdivision (a), pursuant to Section 25620.5. In the event that contracts or interagency agreements have been made to multiple entities and their subcontractors for similar purposes, the commission may select from among those entities the particular expertise needed for a specified type of work. Selection of the particular expertise may be based solely on a review of qualifications, including the specific expertise required, availability of the expertise, or access to a resource of special relevance to the work, including, but not limited to, a database, model, technical facility, or a collaborative or institutional affiliation that will expedite the quality and performance of the work.

SEC. 7. Section 25620.8 of the Public Resources Code is amended to read:

25620.8. The commission shall prepare and submit to the Legislature an annual report, not later than March 31 of each year, on awards made pursuant to this chapter. The report shall include information on the names of award recipients, the amount of awards, and the types of projects funded, an evaluation of the success of any funded projects, and any recommendations for improvements in the program. The report shall set forth the actual costs of programs or projects funded by the commission, the results achieved, and how the actual costs and results compare to the expected costs and benefits. The commission shall establish procedures for protecting confidential or proprietary information and shall consult with all interested parties in the preparation of the annual report.

SEC. 8. Section 25620.9 is added to the Public Resources Code, to read:

25620.9. (a) Not later than three months after the enactment of this section, the commission shall designate a panel of independent experts with special expertise in public interest research, development, and demonstration programs. In order to ensure continuity in the evaluation of the public interest energy research, demonstration, and development projects, the commission, when practicable, shall select experts that served on prior independent review panels. The panel shall conduct a



comprehensive evaluation of the program established pursuant to this chapter. The evaluation shall include a review of the public value of programs established pursuant to this chapter, including, but not limited to, the monetary and nonmonetary benefits to public health and the environment, and the benefit of providing funds for technology development that would otherwise not be funded.

(b) Not later than 15 months after the enactment of this section, the panel designated pursuant to subdivision (a) shall submit a preliminary report to the Governor and to the Legislature on its findings and recommendations on the implementation of the program established pursuant to this chapter. The panel, not later than 30 months after the enactment of this section, shall submit a final report to the Governor and to the Legislature, including any additional findings and recommendations regarding implementation of the program.

(c) This section shall remain in effect only until July 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 9. Section 25620.10 is added to the Public Resources Code, to read:

25620.10. The commission shall regularly convene an advisory board that shall make recommendations to guide the commission's selection of programs and projects to be funded under this chapter. The advisory board shall be made up of representatives from the Public Utilities Commission, consumer organizations, environmental organizations, and electrical corporations subject to the funding requirements of Section 381 of the Public Utilities Code.

SEC. 10. Section 25648 of the Public Resources Code is amended to read:

25648. (a) The commission shall make loans, and research contract and grant awards, for purposes of making existing energy technologies more efficient, cost-effective, and environmentally acceptable, and to research, develop, demonstrate, and commercialize new, cost-effective alternative sources of energy, technologies which displace conventional fuels, and energy efficiency and conservation devices.

(b) In selecting projects, the commission shall consider, but is not limited to, the list of opportunity technologies developed in the most current energy development report produced pursuant to Section 25604, or a subset of those opportunity technologies.

(c) The commission shall select the projects through competitive bid procedures, including, but not limited to, invitations for bids, requests for proposals, program opportunity notices, and multistep bids using preapplications, by demonstrating the need for sole source awards, or by evaluating small business grant and loan applications.



(d) The criteria for the selection of projects shall include, but not be limited to, all of the following factors:

(1) The potential of the project to reduce energy consumption or provide an alternative source of energy.

(2) The financial, technical, and management strength of the project applicant.

(3) The near-term and long-term feasibility of the project.

(4) The ability of the project technology to be used throughout California.

(5) The potential of the project for promoting diverse, secure, and resilient energy supplies.

(6) The potential of the project to displace petroleum.

(7) The potential of the project for reducing adverse environmental impacts.

(8) The potential of the project to stimulate economic development, employment, and tax revenues for California.

(9) The potential of the project for reducing short-term and long-term energy costs for the ratepayers of California.

(10) The need of the project for state financing.

(11) The ability of the project to attract private and other public investment.

(12) The investment payback period for the project.

(13) The probability of success in overcoming the risk of the project.

(14) The potential for stimulating small business competition in the field of alternative energy development.

(15) The ability of the project to generate needed community economic development for participating local jurisdictions.

(16) The extent of the applicant's financial participation.

(17) The degree of innovation of the project.

(18) Whether the project is, in general, consistent with the energy policies of California regarding the energy technologies and priorities as set forth in the biennial report of the commission.

(19) The cost of the project.

(e) The commission shall apply the criteria specified in subdivision (d) consistently within each competitive bid solicitation.

(f) Awards provided pursuant to this chapter are not subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 11. Section 25648.4 of the Public Resources Code is amended to read:

25648.4. The commission shall apply this chapter to research, development, demonstration, and commercialization projects that are not subject to Chapter 6 (commencing with Section 3800) of Division



3, Chapter 7.1 (commencing with Section 25620), and Chapter 7.8 (commencing with Section 25680).

SEC. 12. Section 25684 of the Public Resources Code is amended to read:

25684. (a) The commission shall make loans and repayable research contracts, and may provide primary research contracts funding from the account for the purposes of making energy technologies more efficient and cost-effective, and to develop new cost-effective alternative sources of energy. The commission shall select recipients through a procedure using an invitation for bids or a request for proposals. Each invitation for bids and request for proposals shall specify the criteria to be used in selecting projects for financing. The criteria shall include, but not be limited to, all of the following factors:

(1) The potential of the project to reduce consumption and increase the efficiency of nonrenewable energy sources and systems.

(2) The financial, technical, and management strength of the project applicant.

(3) The near-term and long-term feasibility of the project.

(4) The ability of the project technology to be used on other applications throughout California.

(5) The potential of the project for promoting diverse, secure, and resilient energy supplies.

(6) The potential of the project for reducing adverse environmental impacts.

(7) The potential of the project to stimulate economic development, employment, and tax revenues for California.

(8) The potential of the project for reducing short-term and long-term energy costs for the ratepayers of California.

(9) The need of the project for state financing.

(10) The ability of the project to garner private investment.

(11) The investment payback period for the project.

(12) The probability of success in overcoming the risk of the project.

(13) The potential for stimulating small business competition in the field of alternative energy development.

(14) The ability of the project to generate needed community economic development for participating local jurisdictions.

(15) The extent of the applicant's financial participation.

(16) The degree of innovation of the project.

(17) Whether the project is in general agreement with the energy policies of California regarding the energy technologies and priorities as set forth in the biennial report of the commission.





(b) Awards provided pursuant to this chapter are not subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 13. Section 353.2 is added to the Public Utilities Code, to read:

353.2. (a) As used in this article, “ultra-clean and low-emission distributed generation” means any electric generation technology that meets all of the following criteria:

(1) Commences initial operation between January 1, 2003, and December 31, 2005.

(2) Produces zero emissions during its operation or produces emissions during its operation that are equal to or less than the 2007 State Air Resources Board emission limits for distributed generation, except that technologies operating by combustion must operate in a combined heat and power application with a 60-percent system efficiency on a higher heating value.

(b) In establishing rates and fees, the commission may consider energy efficiency and emissions performance to encourage early compliance with air quality standards established by the State Air Resources Board for ultra-clean and low-emission distributed generation.

SEC. 14. Section 381 of the Public Utilities Code is amended to read:

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage. This rate component shall fall within the rate levels identified in subdivision (a) of Section 368.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs that enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging renewable resource technologies defined as electricity produced from other than a conventional power source within the meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included.

(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds, as follows:



(1) Cost-effective energy efficiency and conservation activities shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2001: for San Diego Gas and Electric Company a level of thirty-two million dollars (\$32,000,000) per year; for Southern California Edison Company a level of ninety million dollars (\$90,000,000) for each of the years 1998, 1999, and 2000; fifty million dollars (\$50,000,000) for the year 2001; and for Pacific Gas and Electric Company a level of one hundred six million dollars (\$106,000,000) per year.

(2) Research, development, and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded pursuant to Section 399.8.

(3) In-state operation and development of existing and new and emerging renewable resource technologies shall be funded at not less than the following levels on a statewide basis: one hundred nine million five hundred thousand dollars (\$109,500,000) per year for each of the years 1998, 1999, and 2000, and one hundred thirty-six million five hundred thousand dollars (\$136,500,000) for the year 2001. To accomplish these funding levels over the period described herein the San Diego Gas and Electric Company shall spend twelve million dollars (\$12,000,000) per year, the Southern California Edison Company shall expend no less than forty-nine million five hundred thousand dollars (\$49,500,000) for the years 1998, 1999, and 2000, and no less than seventy-six million five hundred thousand dollars (\$76,500,000) for the year 2001, and the Pacific Gas and Electric Company shall expend no less than forty-eight million dollars (\$48,000,000) per year through the year 2001. Additional funding not to exceed seventy-five million dollars (\$75,000,000) shall be allocated from moneys collected pursuant to subdivision (d) in order to provide a level of funding totaling five hundred forty million dollars (\$540,000,000).

(4) Up to fifty million dollars (\$50,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to implementation of subdivision (a) of Section 374. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(5) Up to ninety million dollars (\$90,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to contractual arrangements in the Southern California Edison service territory stemming from the Biennial Resource Planning Update auction. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).



(6) The funding of in-state operation and development of existing and new and emerging renewable resources technologies shall be made available pursuant to Section 399.8.

(d) Notwithstanding any other provisions of this chapter, the commission may allow entities subject to its jurisdiction to extend the period for competition transition charge collection up to three months beyond its otherwise applicable termination of December 31, 2001, so as to ensure that the aggregate portion of the research, environmental, and low-income funds allocated to renewable resources shall equal five hundred forty million dollars (\$540,000,000) and that the costs specified in paragraphs (3), (4), and (5) of subdivision (c) are collected.

(e) Each electrical corporation shall allow customers to make voluntary contributions through their utility bill payments as either a fixed amount or a variable amount to support programs established pursuant to paragraph (3) of subdivision (b). Funds collected by electrical corporations for these purposes shall be forwarded in a timely manner to the appropriate fund as specified by the commission.

(f) For purposes of this article, “emerging renewable technology” means a new renewable technology, including, but not limited to, fuel cells using renewable fuels and photovoltaic technology, that is determined by the State Energy Resources Conservation and Development Commission to be emerging from research and development and that has significant commercial potential.

(g) The commission’s authority to collect funds pursuant to this section, for purposes of paragraph (3) of subdivision (b), shall become inoperative on March 31, 2002.

SEC. 15. Section 383.5 of the Public Utilities Code is amended to read:

383.5. (a) It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California.

(b) As used in this section, the following terms have the following meaning:

(1) “In-state renewable electricity generation technology” means a facility that meets all of the following criteria:

(A) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.



(B) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within this state.

(C) For the purposes of this subdivision, “solid waste conversion” means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(i) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(ii) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801 of the Health and Safety Code.

(iii) The technology produces no discharges to surface or groundwaters of the state.

(iv) The technology produces no hazardous wastes.

(v) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that the those materials will be recycled or composted.

(vi) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(vii) The technology meets any other conditions established by the State Energy Resources Conservation and Development Commission.

(viii) The facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000) of the Public Resources Code, has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling and composting.

(2) “Report” means the report entitled “Investing in Renewable Electricity Generation in California” (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the State Energy Resources Conservation and Development Commission.

(3) “Energy Commission” means the State Energy Resources Conservation and Development Commission.

(c) (1) Twenty percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. Eligibility for incentives under



this subdivision shall be limited to those technologies found eligible for funds by the Energy Commission pursuant to paragraphs (5), (6), and (8) of subdivision (c) of Section 399.6.

(2) Any funds used to support in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the provisions of the report, subject to all of the following requirements:

(A) Of the funding for existing renewable electricity generation technology facilities available pursuant to this subdivision, 75 percent shall be used to fund first tier technologies, including biomass and solar electric technologies and 25 percent shall be used to fund second tier wind technologies.

(B) The Energy Commission shall reexamine the tier structure as proposed in the report and adjust the structure to reflect market and contractual conditions. The Energy Commission shall also consider inflation when adjusting the structure.

(C) The Energy Commission shall establish a cents per kilowatthour production incentive, not to exceed the payment caps per kilowatthour established in the report, as those payment caps are revised in guidelines adopted by the commission, representing the difference between target prices and the market clearing price for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and market clearing price or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The market clearing price for electricity shall be determined by the Energy Commission based on the energy prices paid to nonutility power generators as authorized by the commission, or on otherwise available measures of market price. For the first tier biomass technologies, the Energy Commission shall establish a time-differentiated incentive structure that encourages plants to run the maximum feasible amount of time and that provides a higher incentive when the plants are receiving the lowest price. The Energy Commission may establish a different incentive rate within the same technology tier to account for discounted contracts.

(D) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold at monthly average rates equal to or greater than the applicable target price, as determined by the Energy Commission.

(ii) Is that portion of electricity generation attributable to the use of qualified agricultural biomass fuel, for a facility that is receiving



fuel-based incentives through the Agricultural Biomass-to-Energy Incentive Grant Program established pursuant to Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code. Notwithstanding subdivision (f) of Section 1104 of the Food and Agricultural Code, facilities that receive funding from the Agricultural Biomass-to-Energy Incentive Grant Program are eligible to receive funding pursuant to this subdivision.

(iii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(d) (1) Fifty-one and one-half percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381, shall be used for programs designed to foster the development of new in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used for new in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) In order to cover the above market costs of renewable resources as approved by the commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11), the Energy Commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(i) The Energy Commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the Energy Commission, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.

(ii) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this subdivision.

(iii) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.

(iv) The Energy Commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.



(v) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11).

(B) The Energy Commission may determine as part of a solicitation, that a facility that does not meet the definition of “in-state renewable electricity generation technology” facility solely because it is located outside the state, is eligible for funding under this subdivision if it meets both of the following requirements:

(i) It is located so that it is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

(ii) It is developed with guaranteed contracts to sell its generation to end use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.

(C) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies the provisions of subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6.

(ii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(iii) Is produced by a facility that is owned by an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604.

(iv) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(D) Eligibility to compete for funds or to receive funds shall be contingent upon having to sell the output of the renewable electricity generation facility to customers subject to the funding requirements of Section 381.

(E) The Energy Commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant’s intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.





(F) In awarding funding, the Energy Commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(3) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.

(4) Facilities engaging in the combustion of municipal solid waste or tires are not eligible for funding under this subdivision.

(5) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the Energy Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will not be operational due to circumstances beyond the control of the developer, the Energy Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(6) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation technology facility to the extent that they certify to the satisfaction of the Energy Commission that fuel utilization is limited to the following:

(A) Agricultural crops and agricultural wastes and residues.

(B) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(C) Wood and wood wastes that meet all of the following requirements:

(i) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Ch. 8 (commencing with Sec. 4511), Pt. 2, Div. 4, P.R.C.).

(ii) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(iii) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

(e) (1) Seventeen and one-half percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used

for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

(2) Any funds used for emerging technologies pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(B) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical capacity of the system measured in watts, or in the amount of electricity production of the system, measured in kilowatthours, determined by the Energy Commission.

(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the Energy Commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to Section 381 and contributing funds to support programs under this section. All eligible electricity generating system components shall be new and unused, and shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resource shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The Energy Commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be



operated in compliance with applicable law and the rules of the commission shall be eligible for funding.

(D) The Energy Commission shall limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(E) In awarding funding, the Energy Commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(F) In awarding funding, the Energy Commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including, but not limited to, shading, insolation levels, and installation orientation.

(f) (1) Ten percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used to provide customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.

(2) Any funds used for customer credits pursuant to this subdivision shall be expended, as provided in the report, subject to the following requirements:

(A) Customer credits shall be awarded to California retail customers located in the service territory of an electrical corporation that is subject to Section 381 that is contributing funds to support programs under this section, and that is purchasing qualifying electricity from renewable electricity generating facilities, through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity from the claimed renewable electricity generating facilities has been sold once and only once to a retail customer.

(B) Credits awarded pursuant to this paragraph may be paid directly to electric service providers, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's utility bills. Credits may not exceed one and one-half cents (\$0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, may not exceed one thousand dollars (\$1,000) per customer per calendar year. In no event may more than 20 percent of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.



(C) The Energy Commission shall develop criteria and procedures for the identification of energy purchasers and providers that are eligible to receive funds pursuant to this paragraph through a process consistent with this paragraph. These criteria and procedures shall apply only to funding eligibility and may not extend to other renewable marketing claims.

(D) The commission shall notify the Energy Commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to paragraph (4) of subdivision (b) of Section 394.25.

(E) By March 31, 2003, the Energy Commission shall report to the Governor and the Legislature on how to most effectively utilize the funds for customer credits, including whether, and under what conditions, the program should be continued. The report shall include an examination of trends in markets for renewable energy, including the trading of nonenergy attributes, and the role of customer credits in these markets. The report will recommend an appropriate funding allocation for the customer credits and how implementation of the customer credits should be structured, if appropriate.

(F) Customer credits may not be awarded for the purchase of electricity that is used to meet the obligations of a renewable portfolio standard.

(g) One percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used in accordance with the report to promote renewable energy and to disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(h) (1) The Energy Commission shall adopt guidelines governing the funding programs authorized under this section and Section 399.13, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this paragraph by the act amending this section during the 2002 portion of the 2001–02 Regular Session are declaratory of, and not a change in existing law.

(2) Funds to further the purposes of this section may be committed for multiple years.



(3) Awards made pursuant to this section are grants, subject to appeal to the Energy Commission upon a showing that factors other than those described in the guidelines adopted by the Energy Commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and registered to receive, payments or awards, including satisfying conditions specified by the Energy Commission, shall not constitute the rendering of goods, services, or a direct benefit to the Energy Commission.

(i) The Energy Commission shall report to the Legislature on or before May 31, 2000, and on or before May 31 of every second year thereafter, regarding the results of the mechanisms funded pursuant to this section. Reports prepared pursuant to this subdivision shall include a description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies. The reports shall discuss the progress being made toward achieving the 17 percent target provided in subdivision (a) by each funding category authorized pursuant to subdivisions (c), (d), (e), (f), and (g) of this section. The reports shall also address the allocation of funds from interest on the accounts described in this section, and money in the accounts described in subdivision (e) of Section 381. Notwithstanding subdivisions (c), (d), (e), (f), and (g) of this section, money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this subdivision, except that reallocations may not reduce the allocation established in subdivision (d) nor increase the allocation established in subdivision (c).

(j) The Energy Commission shall, by December 1, 2003, prepare and submit to the Legislature a comprehensive renewable electricity generation resource plan that describes the renewable resource potential available in California, and recommendations for a plan for development to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006. The Energy Commission shall consult with the commission, electrical corporations, and the Independent System Operator, in the development and preparation of the plan.

(k) The Energy Commission shall participate in proceedings at the commission that relate to or affect efforts to stimulate the development of electricity generated from renewable sources, in order to obtain coordination of the state's efforts to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that



it equals 17 percent of the total electricity generated for consumption in California by 2006.

SEC. 16. Section 383.6 is added to the Public Utilities Code, to read:

383.6. The commission shall, by December 1, 2003, prepare and submit to the Legislature, a comprehensive transmission plan for renewable electricity generation facilities, to provide for the rational, orderly, cost-effective expansion of transmission facilities that may be necessary to facilitate the development of renewable electricity generation facilities identified in the renewable electricity generation resource plan prepared pursuant to subdivision (j) of Section 383.5. The commission shall consult with the State Energy Resources Conservation and Development Commission, the Independent System Operator, and electrical corporations in the development of and preparation of the plan.

SEC. 17. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as specifically set forth in this part. Electric service providers shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.





(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electricity customers.

(3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the electric service provider to cease serving customers within the boundaries of investor-owned electrical corporations, and the affected customers shall be served by the electrical corporation until the time when they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any electric service provider under the service agreement if the serving electric service provider's registration is suspended or revoked.

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources Conservation and Development Commission pursuant to paragraph (1) of subdivision (f) of Section 383.5. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State Energy Resources Conservation and Development Commission pursuant to Section 383.5. This subdivision may not be construed to apply retroactively.

SEC. 18. Section 399.7 of the Public Utilities Code, as added by Section 4 of Chapter 1050 of the Statutes of 2000, is repealed.

SEC. 19. Section 399.7 of the Public Utilities Code, as added by Section 4 of Chapter 1051 of the Statutes of 2000, is amended to read:

399.7. (a) In order to ensure that prudent investments in research, development and demonstration of energy efficient technologies continue to produce substantial economic, environmental, public health, and reliability benefits, it is the policy of this state and the intent of the Legislature that funds made available, upon appropriation, for energy related public interest research, development and demonstration





programs shall be used to advance science or technology that are not adequately provided by competitive and regulated markets.

(b) Notwithstanding any other provision of law, moneys collected for public-interest research, development and demonstration pursuant to this section shall be transferred to the Public Interest Research, Development, and Demonstration Fund of the Energy Commission to be held until further action by the Legislature. The Energy Commission shall prepare and submit to the Legislature, on or before March 1, 2001, an initial investment plan for these moneys, addressing the application of moneys collected between January 1, 2002, and January 1, 2007. The initial investment plan shall address the recommendations of the PIER Independent Review Panel Report, dated March 2000, to either transform the RD&D program within the Energy Commission, or to administer it through, or in cooperation with, an external organization. The initial investment plan shall include criteria that will be used to determine that a project provides public benefits to California that are not adequately provided by competitive and regulated markets. On or before March 31, 2006, the Energy Commission shall prepare an investment plan addressing the application of moneys collected between January 1, 2007, and January 1, 2012. No moneys may be expended in the years covered by these plans without further legislative action.

(c) In lieu of the commission retaining funds authorized pursuant to Section 381 for investments made by electrical corporations in public interest research, development, and demonstration projects for transmission and distribution functions, up to 10 percent of the funds transferred to the Energy Commission pursuant to subdivision (b) shall be awarded to electrical corporations for public interest research, development, and demonstration projects for transmission and distribution functions consistent with the policies and subject to the requirements of Chapter 7.1 (commencing with Section 25620) of Division 15 of the Public Resources Code.

SEC. 20. Section 445 of the Public Utilities Code is amended to read:

445. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby created within the Renewable Resource Trust Fund:

- (1) The Existing Renewable Resources Account.
- (2) New Renewable Resources Account.
- (3) Emerging Renewable Resources Account.
- (4) Customer-Credit Renewable Resource Purchases Account.
- (5) Renewable Resources Consumer Education Account.



(c) The money in the fund may be expended for the state's administration of this article only upon appropriation by the Legislature in the annual Budget Act.

(d) Notwithstanding Section 383, that portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to paragraphs (3) and (6) of subdivision (c) of Section 381, shall be transmitted to the State Energy Resources Conservation and Development Commission (hereafter the Energy Commission) at least quarterly for deposit in the Renewable Resource Trust Fund. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the Energy Commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the Energy Commission without regard to fiscal year for the purposes enumerated in Section 383.5.

(e) Upon notification by the Energy Commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in Section 383.5. The eligibility of each award shall be determined solely by the Energy Commission based on the procedures it adopts under subdivision (h) of Section 383.5. Based on the eligibility of each award, the Energy Commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the Energy Commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in Section 383.5; and an accounting of future costs associated with any award or group of awards known to the Energy Commission to represent a portion of a multiyear funding commitment.

(f) The Energy Commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts. The Energy Commission shall examine the cashflow in the respective accounts on an annual basis, and shall annually prepare and submit to the Legislature a report that describes the status of account transfers and repayments.

(g) The Energy Commission shall, on a quarterly basis, report to the Legislature on the implementation of this article. Those quarterly reports



shall be submitted to the Legislature not more than 30 days after the close of each quarter and shall include information describing the awards submitted to the Controller for payment pursuant to this article, the cumulative commitment of claims by account, the relative demand for funds by account, a forecast of future awards, and other matters the Energy Commission determines may be of importance to the Legislature.

(h) The Department of Finance, commencing March 1, 1999, shall conduct an independent audit of the Renewable Resource Trust Fund and its related accounts annually, and provide an audit report to the Legislature not later than March 1 of each year for which this article is operative. The Department of Finance's report shall include information regarding revenues, payment of awards, reserves held for future commitments, unencumbered cash balances, and other matters that the Director of Finance determines may be of importance to the Legislature.

SEC. 21. Section 2826.5 is added to the Public Utilities Code, to read:

2826.5. (a) As used in this section, the following terms have the following meanings:

(1) "Benefiting account" means an electricity account, or more than one account, mutually agreed upon by Pacific Gas and Electric Company and the City of Davis.

(2) "Bill credit" means credits calculated based upon the electricity generation component of the rate schedule applicable to a benefiting account, as applied to the net metered quantities of electricity.

(3) "PVUSA" means the photovoltaic electricity generation facility selected by the City of Davis, located at 24662 County Road, Davis, California, with a rated peak electricity generation capacity of 600 kilowatts, and as it may be expanded, not to exceed one megawatt of peak generation capacity.

(4) "Net metered" means the electricity output from the PVUSA.

(5) "Environmental attributes" associated with the PVUSA include, but are not limited to, the credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, however entitled resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the PVUSA.

(b) The City of Davis may elect to designate a benefiting account, or more than one account, to receive bill credit for the electricity generated by the PVUSA, if all of the following conditions are met:

(1) A benefiting account receives service under a time-of-use rate schedule.



(2) The electricity output of the PVUSA is metered for time of use to allow allocation of each bill credit to correspond to the time-of-use period of a benefiting account.

(3) All costs associated with the metering requirements of paragraphs (1) and (2) are the responsibility of the City of Davis.

(4) All electricity delivered to the electrical grid by the PVUSA is the property of Pacific Gas and Electric Company.

(5) PVUSA does not sell electricity delivered to the electrical grid to a third party.

(6) The right, title, and interest in the environmental attributes associated with the electricity delivered to the electrical grid by the PVUSA are the property of Nuon Renewable Ventures USA, LLC.

(c) A benefiting account shall be billed on a monthly basis, as follows:

(1) For all electricity usage, the rate schedule applicable to the benefiting account, including any surcharge, exit fee, or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(2) The rate schedule for the benefiting account shall also provide credit for the generation component of the time-of-use rates for the electricity generated by the PVUSA that is delivered to the electrical grid. The generation component credited to the benefiting account may not include the surcharge, exit fee, or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(3) If in any billing cycle, the charge pursuant to paragraph (1) for electricity usage exceeds the billing credit pursuant to paragraph (2), the City of Davis shall be charged for the difference.

(4) If in any billing cycle, the billing credit pursuant to paragraph (2), exceeds the charge for electricity usage pursuant to paragraph (1), the difference shall be carried forward as a credit to the next billing cycle.

(5) After the electricity usage charge pursuant to paragraph (1) and the credit pursuant to paragraph (2) are determined for the last billing cycle of a calendar year, any remaining credit resulting from the application of this section shall be reset to zero.

(d) Not more frequently than once per year, and upon providing Pacific Gas and Electric Company with a minimum of 60 days notice, the City of Davis may elect to change a benefiting account. Any credit resulting from the application of this section earned prior to the change in a benefiting account that has not been used as of the date of the change



in the benefit account, shall be applied, and may only be applied, to a benefiting account as changed.

(e) Pacific Gas and Electric Company shall file an advice letter with the Public Utilities Commission, that complies with this section, not later than 10 days after the effective date of this section, proposing a rate tariff for a benefiting account. The commission, within 30 days of the date of filing, shall approve the proposed tariff, or specify conforming changes to be made by Pacific Gas and Electric Company to be filed in a new advice letter.

(f) The City of Davis may terminate its election pursuant to subdivision (b), upon providing Pacific Gas and Electric Company with a minimum of 60 days notice. Should the City of Davis sell its interest in the PVUSA, or sell the electricity generated by the PVUSA, in a manner other than required by this section, upon the date of either event, and the earliest date if both events occur, no further bill credit pursuant to paragraph (2) of subdivision (b) may be earned. Only credit earned prior to that date shall be made to a benefiting account.

(g) The Legislature finds and declares that credit for a benefiting account for the electricity output from the PVUSA are in the public interest in order to value the production of this unique, wholly renewable resource electricity generation facility located in, and owned in part by, the City of Davis. Because of the unique circumstances applicable only to the PVUSA a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 22. Section 2826.6 is added to the Public Utilities Code, to read:

2826.6. (a) As used in this section, the following terms have the following meanings:

(1) “Benefiting account” means an electricity account, or more than one account, mutually agreed upon by Pacific Gas and Electric Company and California State University, Fresno, as selected by California State University, Fresno.

(2) “Bill credit” means credits calculated based upon the electricity generation component of the rate schedule applicable to a benefiting account, as applied to the net metered quantities of electricity.

(3) “Dinuba Facility” means the biomass facility located in Reedley, California, that supplies 11.5 megawatts, using no more than 20 percent natural gas, to the electrical grid owned by Pacific Gas and Electric Company.

(4) “Environmental attributes” associated with the Dinuba Facility include, but are not limited to, the credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction



credits, offsets, and allowances, however entitled resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Dinuba Facility.

(5) “Net metered” means the electricity output from the Dinuba Facility.

(b) California State University, Fresno may elect to designate a benefiting account, or more than one account, to receive bill credit for the electricity generated by the Dinuba Facility, if all of the following conditions are met:

(1) A benefiting account receives service under a time-of-use rate schedule.

(2) The electricity output of the Dinuba Facility is metered for time of use to allow allocation of each bill credit to correspond to the time-of-use period of a benefiting account.

(3) All costs associated with the metering requirements of paragraphs (1) and (2) are the responsibility of California State University, Fresno.

(4) All electricity delivered to the electrical grid by the Dinuba Facility is the property of Pacific Gas and Electric Company.

(5) The Dinuba Facility does not sell electricity delivered to the electrical grid to a third party.

(6) The right, title, and interest in the environmental attributes associated with the electricity delivered to the electrical grid by the Dinuba Facility are the property of Auxiliary Corporation of California State University, Fresno.

(c) A benefiting account shall be billed on a monthly basis, as follows:

(1) For all electricity usage, the rate schedule applicable to the benefiting account shall be the rate schedule of the benefiting account, including any surcharge, exit fee, or other cost recovery mechanism, as determined by the Public Utilities Commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(2) The rate schedule for the benefiting account shall also provide credit for the generation component of the time-of-use rates for the electricity generated by the Dinuba Facility that is delivered to the electrical grid. The generation component credited to the benefiting account may not include the surcharge, exit fee, or other cost recovery mechanism, as determined by the Public Utilities Commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.



(3) If in any billing cycle, the charge pursuant to paragraph (1) for electricity usage exceeds the billing credit pursuant to paragraph (2), California State University, Fresno shall be charged for the difference.

(4) If in any billing cycle, the billing credit pursuant to paragraph (2), exceeds the charge for electricity usage pursuant to paragraph (1), the difference shall be carried forward as a credit to the next billing cycle.

(5) After the electricity usage charge pursuant to paragraph (1) and the credit pursuant to paragraph (2) are determined for the last billing cycle of a calendar year, any remaining credit resulting from the application of this section shall be reset to zero.

(d) Not more frequently than once per year, and upon providing Pacific Gas and Electric Company with a minimum of 60 days notice, California State University, Fresno may elect to change a benefiting account. Any credit resulting from the application of this section earned prior to the change in a benefiting account that has not been used as of the date of the change in the benefit account, shall be applied, and may only be applied, to a benefiting account as changed.

(e) Pacific Gas and Electric Company shall file an advice letter with the Public Utilities Commission, that complies with this section, not later than 10 days after the effective date of this section, proposing a rate tariff for a benefiting account. The commission, within 30 days of the date of filing, shall approve the proposed tariff, or specify conforming changes to be made by Pacific Gas and Electric Company to be filed in a new advice letter.

(f) California State University, Fresno may terminate its election pursuant to subdivision (b), upon providing Pacific Gas and Electric Company with a minimum of 60 days notice. Should California State University, Fresno sell its interest in the Dinuba Facility, or sell the electricity generated by the Dinuba Facility, in a manner other than required by this section, upon the date of either event, and the earliest date if both events occur, no further bill credit pursuant to paragraph (2) of subdivision (b) may be earned. Only credit earned prior to that date shall be made to a benefiting account.

(g) The Legislature finds and declares that credit for a benefiting account for the electricity output from the Dinuba Facility is in the public interest in order to value the production of this unique, renewable resource electricity generation facility located in Reedley, and owned by California State University, Fresno. Because of the unique circumstances applicable only to the Dinuba Facility, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.





(h) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 23. It is the intent of the Legislature, in adding Section 2826.5 to the Public Utilities Code, to establish a policy to provide the City of Davis with a bill credit for the electricity generated at a photovoltaic facility owned in part by the City of Davis known as PVUSA. PVUSA is a pioneering solar research project, which for many years served as a partnership between public and private utilities, government agencies, and private companies involved in the photovoltaic industry. PVUSA helped to research and demonstrate the use of photovoltaics for utility scale applications, and helped the industry learn more about how utilities could use photovoltaic systems in their generation mix. The City of Davis recently acquired the project from the State Energy Resources Conservation and Development Commission, and wishes to continue to utilize this existing unique facility. The goal of Section 2826.5 of the Public Utilities Code is to provide the City of Davis flexibility in benefiting from this photovoltaic electric generation project, while preventing any negative consequences for other utility customers.

SEC. 24. It is the intent of the Legislature, in adding Section 2826.6 to the Public Utilities Code, to establish a policy to provide California State University, Fresno with a bill credit for the electricity generated at a biomass facility owned by California State University, Fresno known as the Dinuba Facility or Dinuba Energy. The Dinuba Facility, located in Reedley, was donated to the Auxiliary Corporations of California State University, Fresno in 1999, which completed extensive maintenance and repair efforts on the facility. The Dinuba Facility began operations again in July 2001. The Dinuba Facility is located within 50 miles of the university, and uses forest fuels and agricultural byproducts to generate electricity, and may significantly contribute to reeducation in ambient particulate matter in the Central Valley. The goal of Section 2826.6 of the Public Utilities Code is to provide California State University, Fresno flexibility in benefiting from this biomass facility, while preventing any negative consequences for other utility customers.

SEC. 25. Section 14 of this bill shall only become operative if either, or both, Senate Bill 1078 or Senate Bill 1524 of the 2001–02 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2003, and add the California Renewables Portfolio Standard Program as Article 16 (commencing with Section 399.11) to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will



be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article X111 B of the California Constitution.

